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No. 75-107

In the Supreme Court of the United States

OCTOBER TERM, 1975

MICHAEL P. KATRANIS AND CHRIST M. KATRANIS,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioners question the sufficiency of the two indictments returned against them and consolidated for trial, and of the evidence to sustain their convictions.

After a jury trial in the United States District Court for the Eastern District of Michigan, petitioners were convicted of (1) endeavoring to obstruct the communication to the FBI of information concerning federal gambling offenses, in violation of 18 U.S.C. 1510 and 2, and (2) unlawfully carrying firearms during the commission of a felony under federal law, in violation of 18 U.S.C. 924(c) and 2. Petitioner Michael Katranis was sentenced to consecutive terms

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of five years' imprisonment on each charge. Petitioner Christ Katranis was sentenced to consecutive terms of imprisonment for three years on the first charge and one year on the second. Both petitioners were sentenced pursuant to the immediate parole eligibility provisions of 18 U.S.C. 4208(a)(2). The court of appeals affirmed (Pet. App. A).

In early 1972, in the course of an investigation into illegal gambling activities in Detroit, Michigan, the FBI focused attention on a club at the Clifford Hotel. George Nicolaou was participating in the investigation as a paid informant (Tr. A 23–24, 49–50, 54–59; Tr. C 56–58, 62).[1] At about 4:00 a.m. on May 28, 1972, several individuals entered the hotel and attacked the doorman. A few minutes later Nicolaou entered the hotel, saw the bleeding doorman, and was greeted by petitioner Michael Katranis with the words, "Mr. Nick, the FBI informer." Michael then introduced Nicolaou to Pete Katranis, identifying Nicolaou as an informant.[2] Nicolaou shook Pete's hand and noticed that it had blood on it and a white cloth wound around it (Tr. A 22–24, 30, 54–60).

Almost immediately Pete Katranis hit Nicolaou in the face with a gun and demanded to know why he was an informant. All three Katranises then fell upon Nicolaou and beat him violently (Tr. A 30–32). Michael said, "He's going to talk with the FBI all right. I know he's going to talk to the FBI" (Tr. A

[1] "Tr. A" and "Tr. C" refer to the first and third volumes of the transcripts of proceedings in the district court, copies of which we are lodging with the Clerk of this Court.

[2] Pete Katranis, named as a defendant in the first indictment, was deceased at the time of trial (Pet. 7).

33); Pete took Nicolaou's wallet, examined the personal papers therein, and said, "Now we know where you live and where you work. If you talk to the FBI, we going to get you" (Tr. A 33). After threatening to kill him on the spot, Pete told Nicolaou that if he talked to the FBI or local police officers they would "get" him and his family (Tr. A 35). As the Katranises prepared to leave, Michael told Nicolaou, "We don't want you here no more." Christ Katranis, however, said, "Let him come here. We need his action" (Tr. A 46). Pete said, "We'll see you boys" and, pointing a finger at the doorkeeper, "We'll see you, too" (Tr. A 35–36). Nicolaou was in the hospital for a period of two weeks following the beating (Tr. C 12–13).

Nicolaou testified at trial that after the three Katranises had departed he heard someone say that they intended to take over the gambling enterprise at the Clifford Hotel and all the other gambling places downtown. The court cautioned the jury that this testimony was admitted not for the truth of the statement, but merely to show that the statement was made (Tr. A 45–46).

1. Petitioners argue (Pet. 13–17) that the indictment charging them with illegally carrying firearms during the commission of a federal felony failed to allege all the essential elements of the offense. This claim must be assessed under the well established principle that "[i]t is generally sufficient that an indictment set forth the offense in the words of the statute itself, as long as 'those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to

constitute the offence intended to be punished.' *United States* v. *Carll*, 105 U.S. 611, 612 (1882)." *Hamling* v. *United States*, 418 U.S. 87, 117.

The essential elements of the crime proscribed by 18 U.S.C. 924 are (1) the carrying of a firearm, (2) unlawfully, (3) in the commission of a felony that may be prosecuted in a federal court. The indictment of which petitioners complain (Pet. App. D) charges that on a certain date petitioners "did unlawfully * * * carry certain firearms, to wit: two handguns, during the commission of the offense of obstruction of a criminal investigation, a felony prosecutable in a court of the United States * * * ." Thus the indictment went beyond a simple recitation of the words of the statute itself, explicitly alleged each essential element of the crime, and adequately apprised petitioners of the charges against them. This was more than enough to satisfy the test laid down in *Hamling*, *supra*, and petitioners' challenge to the sufficiency of the indictment is accordingly without merit.

2. Petitioners contend next (Pet. 18-24) that their threats to harm Nicolaou and his family if he went to the FBI related to an incident two years earlier when Michael Katranis had struck him. Even assuming that the beating inflicted on Nicolaou had elements of reprisal for a communication to the FBI two years before, the jury was entitled to believe on the evidence presented that petitioners had beaten the doorman of the hotel just before Nicolaou entered; that the violence was connected with petitioners' involvement in illegal gambling activities; and that the attack on Nicolaou was designed at least in part to deter him

from reporting to the FBI what he had seen and heard on this occasion. This was the theory espoused by the prosecutor in his opening argument (Tr. A 8-10), and it was amply supported by Nicolaou's testimony (Tr. A 23-36). Taking the view most favorable to the government (*Glasser* v. *United States*, 315 U.S. 60, 80), the evidence was sufficient to sustain petitioners' convictions for obstructing the communication of information concerning violations of federal law to a criminal investigator (18 U.S.C. 1510).

3. Petitioners' final claim (Pet. 24-30) is that the indictment under 18 U.S.C. 1510 was insufficient because it did not allege that the government agents to whom communication of criminal activity was obstructed were "criminal investigators" and because it charged obstruction by "threats" rather than by "threats of force."

a. The indictment charged petitioners with obstructing communications to "Special Agents of the Federal Bureau of Investigation" (Pet. App. C). The authority of Special Agents to receive and act upon information concerning federal law violations is well established. See 28 U.S.C. 533; 28 C.F.R. 0.85; *United States* v. *Blackfeet Tribe*, 364 F. Supp. 192, 194 (D. Mont.); *Cooper* v. *O'Connor*, 99 F. 2d 135, 139 (C.A. D.C.). Special Agents are therefore "criminal investigators" within the meaning of 18 U.S.C. 1510(b),[3] and

[3] That section provides that "the term 'criminal investigator' means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations of or prosecutions for violations of the criminal laws of the United States."

the indictment was not insufficient for failure to identify the legal authority of the potential recipients of Nicolaou's information in greater detail.

b. Section 1510 (a) disjunctively proscribes obstruction of criminal investigations by means, *inter alia*, of "intimidation, or force or threats thereof * * *." The indictment (Pet. App. C) charged petitioners with obstruction by "force, threats and intimidation * * *." The facts proved were sufficient to sustain a conviction for obstruction by violence or by intimidation, and therefore the indictment, which specifically charged both, was not insufficient for its failure explicitly to allege obstruction by threat of force. See *United States* v. *Price*, 444 F. 2d 248, 250–251 (C.A. 10).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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